IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 100 of 2004

Chhote S/o Sri Nathu,
R/o Moh. Maheshpura, Kashipur,
District Udham Singh Nagar.

…….. Revisionist

Versus

Smt. Anju Jain
W/o Sri Moti Ram Jain,
R/o Doctor Line, Kashipur,
Distt. Udham Singh Nagar.

…… Respondent

Mr. B.S. Parihar, learned counsel for the revisionist.
Mr. Khalil Ahmad, learned counsel for respondent.

Hon. Prafulla C. Pant, J.

Heard learned counsel for the parties.

2) This revision is directed against the order dated 04.03.2004, passed in Civil Suit No. 41 of 2003, whereby the application for amendment was rejected by the trial court on the ground that the plaintiff failed to mention the provision of law, under which the application was moved.

3) A perusal of the impugned order shows that the amendment application was moved by the plaintiff regarding some alleged construction being raised during the pendency of the suit and also to implead U.P. Avas Evam Vikas Parishad, as a party in the suit. It is true, that the impleadment of party is not required to be sought under Order 6 Rule 17 of the Code of Civil Procedure, 1908, but

the court could have exercised its powers under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908. Merely for the reason, that the proper provision was not quoted in the application, the application cannot be rejected provided otherwise the plaintiff was entitled to the prayer sought by him. In the circumstances, it appears that the trial court has failed to exercise the jurisdiction vested in it. As such, the revision deserved to be allowed.

4) Accordingly, the revision is allowed. Impugned order dated 04.03.2004, passed in Civil Suit No. 41 of 2003 is set aside. The trial court shall consider the application No. 54-A afresh, in accordance with law, in view of the observation made above and proceed with the suit.

(Prafulla C. Pant, J.)

Dt. March 10, 2006.
H. Negi